

House Study Bill 91 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
LABOR BILL BY CHAIRPERSON
HORBACH)

A BILL FOR

1 An Act relating to bidding and contracting for public
2 improvement, public works, and public road projects and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 26.7, Code 2011, is amended by adding the
2 following new subsection:

3 NEW SUBSECTION. 4. A governmental entity shall not in
4 either the notice to bidders or the contract documents require
5 proof of satisfaction of any bidder qualification standards
6 for the bidder or its proposed subcontractors if the bidder is
7 required and able to meet all bond requirements relating to
8 payments and performance in accordance with state law. This
9 section does not prohibit a public owner from exercising its
10 authority under this chapter to determine whether the lowest
11 responsive bidder is a responsible bidder in accordance with
12 state law.

13 Sec. 2. NEW SECTION. 72.6 Public works — contractor
14 qualifications.

15 1. *Definitions.* As used in this section, unless the context
16 otherwise provides:

17 a. "*Public owner*" means a public body including the state
18 or a political subdivision of the state, an officer, official,
19 agency, authority, board, or commission of the state or of a
20 political subdivision of the state, or an institution supported
21 in whole or in part by public funds.

22 b. "*Public road project*" means a project under the control
23 of a public owner for the construction, maintenance, or repair
24 of a road or street that is funded, in whole or in part, by
25 moneys from the road use tax fund.

26 c. "*Public works*" means a building or other construction
27 project which is constructed under the control of a public
28 owner and is paid for in whole or in part with funds of a public
29 owner, including funds directed to the public owner from any
30 federal government source, including grants. "*Public works*"
31 does not include any work done by or on behalf of a drainage
32 or levee district or any work financed by federal funds where
33 federal procurement policy applicable to the use of the federal
34 funds is inconsistent with the requirements of this section.

35 d. "*Public works project*" means the construction,

1 maintenance, or repair of public works. "*Public works project*"
2 does not mean a public road project.

3 2. *Prohibited criteria.* In determining which bidder is the
4 lowest responsible bidder for purposes of awarding a contract
5 to perform a public works project or public road project, a
6 public owner shall not do any of the following:

7 a. Select a bidder based in whole or in part on a
8 consideration of whether the bidder's employees belong to or
9 are represented by a labor union or labor organization.

10 b. Require that the bidder selected enter into an agreement
11 that directly or indirectly requires the bidder to recruit,
12 train, or hire employees from a particular source to perform
13 work on the public works project or public road project.

14 c. Require the bidder or the bidder's subcontractors
15 or their agents to enter into any agreement or arrangement
16 relating to the public works project or public road project
17 which imposes requirements, controls, or limitations on
18 staffing; sources of employee referrals; assignment of work;
19 sources of insurance and benefits including health, life, and
20 disability insurance and retirement pensions; training; or
21 wages. This paragraph does not apply to requirements imposed
22 by federal law.

23 3. *Bidding documents.* Criteria described in this section
24 that cannot be considered by a public owner in determining
25 who is the lowest responsible bidder shall be included in any
26 document requesting or inviting bids on public works projects
27 or public road projects subject to this section.

28 Sec. 3. Section 73A.21, Code 2011, is amended to read as
29 follows:

30 **73A.21 Reciprocal resident bidder and resident labor force**
31 **preference by state, its agencies, and political subdivisions —**
32 **penalties.**

33 1. For purposes of this section:

34 a. "*Commissioner*" means the labor commissioner appointed
35 pursuant to section 91.2, or the labor commissioner's designee.

1 b. "Division" means the division of labor of the department
2 of workforce development.

3 c. "Nonresident bidder" means a person or entity who does
4 not meet the definition of a resident bidder.

5 d. "Public body" means the state and any of its political
6 subdivisions, including a school district, public utility, or
7 the state board of regents.

8 ~~a. e.~~ "Public improvement" means public improvements as
9 defined in section 73A.1 a building or other construction work
10 to be paid for in whole or in part by the use of funds of the
11 state, its agencies, and any of its political subdivisions and
12 includes road construction, reconstruction, and maintenance
13 projects.

14 f. "Public utility" includes municipally owned utilities and
15 municipally owned waterworks.

16 ~~b. g.~~ "Resident bidder" means a person or entity authorized
17 to transact business in this state and having a place of
18 business for transacting business within the state at which
19 it is conducting and has conducted business for at least six
20 ~~months~~ three years prior to the date of the first advertisement
21 for the public improvement and in the case of a corporation,
22 having at least fifty percent of its common stock owned by
23 residents of this state. If another state or foreign country
24 has a more stringent definition of a resident bidder, the more
25 stringent definition is applicable as to bidders from that
26 state or foreign country.

27 h. "Resident labor force preference" means a requirement in
28 which all or a portion of a labor force working on a public
29 improvement is a resident of a particular state or country.

30 2. Notwithstanding this chapter, chapter 73, chapter 309,
31 chapter 310, chapter 331, or chapter 384, when a contract for a
32 public improvement is to be awarded to the lowest responsible
33 bidder, a resident bidder shall be allowed a preference as
34 against a nonresident bidder from a state or foreign country
35 ~~which~~ if that state or foreign country gives or requires a

1 any preference to bidders from that state or foreign country,
2 including but not limited to any preference to bidders, the
3 imposition of any type of labor force preference, or any other
4 form of preferential treatment to bidders or laborers from that
5 state or foreign country. The preference is allowed shall
6 be equal to the preference given or required by the state or
7 foreign country in which the nonresident bidder is a resident.
8 In the instance of a resident labor force preference, a
9 nonresident bidder shall apply the same resident labor force
10 preference to a public improvement in this state as would be
11 required in the construction of a public improvement by the
12 state or foreign country in which the nonresident bidder is a
13 resident.

14 ~~3. This section applies to the state, its agencies, and any~~
15 ~~political subdivisions of the state.~~

16 ~~4.~~ 3. If it is determined that this may cause denial of
17 federal funds which would otherwise be available, or would
18 otherwise be inconsistent with requirements of any federal law
19 or regulation, this section shall be suspended, but only to the
20 extent necessary to prevent denial of the funds or to eliminate
21 the inconsistency with federal requirements.

22 4. The public body involved in a public improvement shall
23 require a nonresident bidder to specify on all project bid
24 specifications and contract documents whether any preference
25 as described in subsection 2 is in effect in the nonresident
26 bidder's state or country of domicile at the time of a bid
27 submittal.

28 5. The commissioner and the division shall administer and
29 enforce this section, and the commissioner shall adopt rules
30 for the administration and enforcement of this section as
31 provided in section 91.6.

32 6. The commissioner shall have the following powers and
33 duties for the purposes of this section:

34 a. The commissioner may hold hearings and investigate
35 charges of violations of this section.

1 b. The commissioner may, consistent with due process of law,
2 enter any place of employment to inspect records concerning
3 labor force residency, to question an employer or employee, and
4 to investigate such facts, conditions, or matters as are deemed
5 appropriate in determining whether any person has violated the
6 provisions of this section. The commissioner shall only make
7 such an entry in response to a written complaint.

8 c. The commissioner shall develop a written complaint form
9 applicable to this section and make it available in division
10 offices and on the department of workforce development's
11 internet site.

12 d. The commissioner may sue for injunctive relief against
13 the awarding of a contract, the undertaking of a public
14 improvement, or the continuation of a public improvement in
15 response to a violation of this section.

16 e. The commissioner may investigate and ascertain the
17 residency of a worker engaged in any public improvement in this
18 state.

19 f. The commissioner may administer oaths, take or cause to
20 be taken deposition of witnesses, and require by subpoena the
21 attendance and testimony of witnesses and the production of all
22 books, registers, payrolls, and other evidence relevant to a
23 matter under investigation or hearing.

24 g. The commissioner may employ qualified personnel as are
25 necessary for the enforcement of this section. Such personnel
26 shall be employed pursuant to the merit system provisions of
27 chapter 8A, subchapter IV.

28 h. The commissioner shall require a contractor or
29 subcontractor to file, within ten days of receipt of a request,
30 any records enumerated in subsection 8. If the contractor or
31 subcontractor fails to provide the requested records within ten
32 days, the commissioner may direct, within fifteen days after
33 the end of the ten-day period, that the fiscal or financial
34 office charged with the custody and disbursement of funds of
35 the public body that contracted for construction of the public

1 improvement or undertook the public improvement, to immediately
2 withhold from payment to the contractor or subcontractor
3 up to twenty-five percent of the amount to be paid to the
4 contractor or subcontractor under the terms of the contract
5 or written instrument under which the public improvement is
6 being performed. The amount withheld shall be immediately
7 released upon receipt by the public body of a notice from
8 the commissioner indicating that the request for records as
9 required by this section has been satisfied.

10 7. While participating in a public improvement, a
11 nonresident bidder domiciled in a state or country that
12 has established a resident labor force preference shall
13 make and keep, for a period of not less than three years,
14 accurate records of all workers employed by the contractor or
15 subcontractor on the public improvement. The records shall
16 include each worker's name, address, telephone number when
17 available, social security number, trade classification, and
18 the starting and ending time of employment.

19 8. Any person or entity that violates the provisions of
20 this section is subject to a civil penalty in an amount not to
21 exceed one thousand dollars for each violation found in a first
22 investigation by the division, not to exceed five thousand
23 dollars for each violation found in a second investigation
24 by the division, and not to exceed fifteen thousand dollars
25 for a third or subsequent violation found in any subsequent
26 investigation by the division. Each violation of this section
27 for each worker and for each day the violation continues
28 constitutes a separate and distinct violation. In determining
29 the amount of the penalty, the division shall consider the
30 appropriateness of the penalty to the person or entity charged,
31 upon determination of the gravity of the violations. The
32 collection of these penalties shall be enforced in a civil
33 action brought by the attorney general on behalf of the
34 division.

35 9. A party seeking review of the division's determination

1 pursuant to this section may file a written request for an
2 informal conference. The request must be received by the
3 division within fifteen days after the date of issuance of
4 the division's determination. During the conference, the
5 party seeking review may present written or oral information
6 and arguments as to why the division's determination should
7 be amended or vacated. The division shall consider the
8 information and arguments presented and issue a written
9 decision advising all parties of the outcome of the conference.

10 Sec. 4. Section 331.341, subsection 2, Code 2011, is amended
11 to read as follows:

12 2. The board shall give preference to Iowa products and
13 ~~labor~~ in accordance with chapter 73 and shall comply with bid
14 and contract requirements in chapter 26.

15 Sec. 5. REPEAL. Sections 73.3 and 73.4, Code 2011, are
16 repealed.

17 Sec. 6. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
18 immediate importance, takes effect upon enactment.

19 Sec. 7. APPLICABILITY. This Act applies to all public
20 improvement, public works, and public road projects, and to
21 public improvement, public works, and public road contracts
22 entered into on or after July 1, 2011.

23 EXPLANATION

24 This bill relates to bidding and contracting for public
25 improvement, public works, and public road projects.

26 The bill provides that for a public improvement project, the
27 public owner is prohibited in either the invitation to bids or
28 the contract documents from requiring proof of satisfaction
29 of any bidder qualification standards for the bidder or its
30 proposed subcontractors so long as the bidder is required and
31 able to meet all payment and performance bond requirements
32 in accordance with state law. The bill specifies that this
33 prohibition is not intended to prohibit the public owner from
34 exercising its authority under Code chapter 26 to determine
35 whether the lowest responsive bidder is a responsible bidder

1 in accordance with state law.

2 The bill sets out procedural requirements which a public
3 body must follow when awarding a contract for a public works
4 project to a bidder through a competitive bidding process. The
5 bill defines criteria that the public body cannot consider
6 when awarding such a contract. Prohibited criteria include
7 whether the bidder's employees belong to or are represented by
8 a labor union; requiring the bidder to enter into an agreement
9 that directly or indirectly requires the bidder to recruit,
10 train, or hire employees from a particular source; or requiring
11 the bidder or its subcontractors or agents to enter into an
12 agreement or arrangement imposing various other limitations
13 relating to the bidder's employees. The bill requires the
14 public body to include the prohibited criteria in any document
15 requesting or inviting bids on public works projects subject
16 to the bill.

17 The bill requires the labor commissioner to administer
18 and enforce Code section 73A.21, which allows the state
19 and political subdivisions awarding a contract for a public
20 improvement to give a preference to an Iowa resident bidder
21 over a nonresident bidder. The preference must be reciprocal
22 to any preference given to in-state resident bidders over
23 nonresident bidders by the state or foreign country of a
24 nonresident bidder. The bill directs the labor commissioner
25 to hire necessary personnel and adopt rules as necessary to
26 administer Code section 73A.21.

27 The bill includes in the reciprocity requirement nonresident
28 bidders from a state or foreign country which gives any type
29 of labor force preference or any other form of preference
30 to resident bidders or laborers. The bill provides that if
31 the provisions of Code section 73A.21 may cause denial of
32 federal funds which would otherwise be available, or would
33 otherwise be inconsistent with requirements of any federal law
34 or regulation, the Code section will be suspended, but only
35 to the extent necessary to prevent denial of the funds or to

1 eliminate the inconsistency with federal requirements. The
2 bill requires a public body involved in a public improvement to
3 require all nonresident bidders to specify on all project bid
4 specifications and contract documents whether the nonresident
5 bidder's state or country of residence has any type of resident
6 bidder preference in effect at the time of a bid submittal.

7 The bill provides the labor commissioner with certain powers
8 relating to nonresident bidders for public improvement projects
9 to enforce Code section 73A.21. The bill provides the labor
10 commissioner with investigative powers concerning nonresident
11 bidders. Such powers include the power to hold hearings, to
12 enter a place of employment to inspect records regarding labor
13 force residency, to question employees, and to take depositions
14 and subpoenas. The bill provides that the labor commissioner
15 may sue for injunctive relief for violations of Code section
16 73A.21. The bill requires the labor commissioner to develop
17 a written complaint form for violations. The bill requires a
18 nonresident contractor domiciled in a state or country that
19 has a resident labor force preference to keep for at least
20 three years accurate records containing certain identifying
21 information including residency for all workers employed by
22 the contractor. The bill provides that the labor commissioner
23 may direct that up to 25 percent of the contract price be
24 withheld from the contractor if the contractor does not file
25 such records until the records are filed. The bill provides
26 for a civil penalty of \$1,000 for each violation found during
27 a first investigation, \$5,000 for each violation found during
28 a second investigation, and \$15,000 for each violation found
29 during a subsequent investigation. The bill provides that a
30 separate and distinct violation occurs for each worker employed
31 by the contractor for each day the worker is employed by the
32 contractor. The bill provides for a review process with the
33 division of labor and sets out procedural requirements. The
34 bill modifies and adds applicable definitions for Code section
35 73A.21.

1 The bill strikes the requirement in Code section 331.341
2 that a county board of supervisors give preference to in-state
3 labor in accordance with Code chapter 73 when contracting for
4 public improvement projects.

5 The bill repeals Code sections 73.3 and 73.4, which require
6 public bodies to give preference to in-state labor in public
7 improvement or public works projects.

8 The bill is effective upon enactment.

9 The bill applies to all public improvement, public works,
10 and public road projects, and to public improvement, public
11 works, and public road contracts entered into on or after July
12 1, 2011.

13 The bill may include a state mandate as defined in Code
14 section 25B.3.